IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ESA No.2783 of 1985

Date of Decision: 14.11.2007

Buta Singh ...Appellant

Vs.

Ram Singh ...Respondent

CORAM: Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Y.K.Sharma, Advocate,
for the appellant.

Mr.S.K.Pipat, Senior Advocate,
with Mr.Ramanjeet Singh, Advocate,
for the respondent.

Vinod K.Sharma, J. (Oral)

This Execution Second appeal has been filed against the judgment passed by the learned Executing Court as affirmed by the learned District Judge, Ludhiana dismissing the objections filed by the appellant against the attachment and sale of his residential house situated at Samrala.

The respondent decree holder obtained a decree against the

appellant on 5.12.1980 for the recovery of Rs.6000/- with costs. Execution application was filed for the recovery of amount under the decree from the judgment debtor and the house of the judgment debtor situated at Samrala was attached. Attachment order was passed on 11.12.1981 and notice under Order 21 Rule 66 of the Code of Civil Procedure (for short the Code) was served upon the judgment debtor and it was ordered that the attached house be sold through auction.

The judgment debtor filed objection petition on the plea that the house in question was not liable to be attached and sold as the same is the only residential house owned by the judgment debtor and the same is also being used by him for the purposes of agriculture as judgment debtor is an agriculturist. It was also claimed that amount of Rs.6000/- already stood paid to the decree holder on 20.10.1983 and there was full and final settlement between the parties through receipt.

In the reply filed, the decree holder took a plea that the judgment debtor has rented out the said house and that it has also been mortgaged with one Ram Kishan. He also denied that the judgment debtor has been residing in the said house as according to the decree holder judgment debtor has been residing at village Bet Sensowal Kalan where he has purchased house and land. Receipt of Rs.6000/- was denied by the decree holder and the receipt produced by the judgment debtor was claimed to be forged document.

On the pleadings of the parties learned Executing Court was pleased to frame the following issues:-

1. Whether the attached property is exempt from the attachment and sale? OPJD
2. Whether the judgment debtor had paid Rs.6000/- to the decree holder on 20.10.1983? OPJD
3. Relief.

On issue No.1 learned Executing Court came to the conclusion that in the cross examination judgment debtor has admitted that the house was mortgaged with Ram Kishan. However, he further stated that the same stood redeemed. However, the learned Executing Court came to the conclusion that in view of the evidence brought on record showing that the judgment debtor was residing at village Bet Sensowal Kalan it could not be said that the house in dispute was the only house owned by the judgment debtor and therefore, was exempt from the sale. On issue No.2 it was held that no payment has been made by the judgment debtor and the receipt produced was not believed. Consequently, objection petition filed by the objector was dismissed.

The appellant filed an appeal. Said appeal was also dismissed. Learned lower appellate court was pleased to observe that though the judgment debtor had alleged that he had redeemed the house which was mortgaged with Ram Kishan but his assertion to this effect had not been believed for want of documentary evidence on record. Thus, it was held that the house in dispute was not exempt from attachment as it was not occupied for agricultural purpose.

Learned lower appellate court relied upon the judgment of

Hon'ble Gujarat High Court in the case of **Patel Bachubhai Vs. Bai Lalita and others AIR 1972 Gujarat 31** and the judgment of Hon'ble Supreme Court in the case of **Appasaheb Tuljaram Desai Vs. Bhalchandra VithalraoThube AIR 1961 SC 589** to hold that the house which was not being used by an agriculturist for agricultural purposes was not exempt from the attachment and sale and thus, dismissed the appeal.

Mr.Y.K.Sharma, learned counsel appearing on behalf of the appellant challenges the finding of the learned courts below primarily on the ground that the courts below were in error in coming to the conclusion that the attached house being not the only residential house was not exempt. Learned counsel for the appellant by referring to Section 60 of the Code contends that the word used in Section is 'houses/buildings' and therefore, the same cannot be restricted to one house alone as is held by the learned Executing Court. Section 60 (1)(c) of the Code as amended by Punjab and Haryana High Court reads as under:-

> **"60. Property liable to attachment and sale in execution of decree:--** The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment debtor, or over which, or the profits of which, he has

a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment debtor or by another person in trust for him or on his behalf.

Provided that the following particulars shall not be liable to such attachment or sale, namely:--

(a) xx xx xx

(b) xx xx xx

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and - not proved by the decree holder to have been lent out on rent or lent to persons other than his father, mother, wife, son, daughter, daughter-in-law, brother, sister or other dependents or left vacant for a period of a year or more;"

This contention of the learned counsel for the appellant cannot be accepted firstly for the reason that to seek exemption of house under section 60 (1) (c) of the Code it has to be proved on record that the house is being used for agricultural purposes. Any other exemption to the residential house would fall under section 61 (ccc). Once it is proved on record that the land of the appellant is situated at Bet Sensowal Kalan and where he has been proved to be residing as he is shown to be the resident of the said village it could not be imagined or said that the house said to have been occupied by him at Samrala was being used for agricultural purposes. This stand of the appellant is further belied from the fact that he admittedly

mortgaged this house with Ram Kishan, though the same was claimed to have been redeemed without showing any proof of the same.

Therefore, it can be safely said that the learned courts below were justified in coming to the conclusion that the attached house was not being used by him for agricultural purposes to claim exemption under section 60 (1) (c) of the Code.

Thus, there being no merit, this appeal is dismissed.

(Vinod K.Sharma)
Judge

14.11.2007
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